UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

LUCIEN P. LEJA,	***)***	
	)	
Plaintiff	***)***	
	)	
v.	***)***	***Civil Docket No. 96-370-P-C***
	)	
WILLIAM R. HOLMES, et al.,	***)***	
	)	
Defendants	***)***	

RECOMMENDED DECISION ON MOTION FOR SUMMARY JUDGMENT AND MOTION TO DISMISS CERTAIN CLAIMS; MEMORANDUM DECISION ON PLAINTIFF'S MOTION TO 'DISMISS' ANSWER TO SUPPLEMENTAL PLEADING

The plaintiff appears *pro se* to assert a claim for relief under 42 U.S.C. § 1983, as well as certain pendant state claims, in connection with the his arrest in October 1994 by deputies of the Cumberland County Sheriff's Department. Defendants William R. Holmes and Donald Foss, with the assent of defendants Carolyn Helwig, Penny Whitney and Cong Van Nguyen, removed the case to this court. Now before the court are three motions: (1) a motion for summary judgment filed on behalf of Helwig and Whitney (Docket No. 39), (2) a motion by the plaintiff to "dismiss" a pleading filed on behalf of Cumberland County Sheriff Wesley Ridlon and certain "unknown Cumberland County Jail personnel" named in the complaint (Docket No. 49), (3) and a motion to dismiss the entire action as to Ridlon and the unknown jail personnel (Docket No. 51). For the reasons that follow, I recommend that the summary judgment motion be granted, I deny the plaintiff's motion to "dismiss" (treated as a motion to strike), and I recommend that the pending dismissal motion be denied.

I. The Summary Judgment Motion

a. Summary Judgment Standards

Summary judgment is appropriate only if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). "In this regard, 'material' means that a contested fact has the potential to change the outcome of the suit under the governing law if the dispute is resolved favorably to the nonmovant. By like token, 'genuine' means that 'the evidence about the fact is such that a reasonable jury could resolve the point in favor of the nonmoving party . . . .'" *McCarthy v. Northwest Airlines, Inc*., 56 F.3d 313, 315 (1st Cir. 1995) (citations omitted). The party moving for summary judgment must demonstrate an absence of evidence to support the nonmoving party's case. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). In determining whether this burden is met, the court must view the record in the light most favorable to the nonmoving party and "give the party the benefit of all reasonable inferences to be drawn in its favor." *Ortega-Rosario v. Alvarado-Ortiz,* 917 F.2d 71, 73 (1st Cir. 1990). Once the moving party has made a preliminary showing that no genuine issue of material fact exists, "the nonmovant must contradict the showing by pointing to specific facts demonstrating that there is, indeed, a trialworthy issue." *National Amusements, Inc. v. Town of Dedham*, 43 F.3d 731, 735 (1st Cir.) (citing *Celotex*, 477 U.S. at 324), *cert. denied*, 132 L. Ed. 2d 255 (1995); Fed. R. Civ. P. 56(e); Local R. 19(b)(2). "This is especially true in respect to claims or issues on which the nonmovant bears the burden of proof." *International Assn. of Machinists & Aerospace Workers v. Winship Green Nursing Ctr*., 103 F.3d 196, 200 (1st Cir. 1996) (citations omitted).

The Local Rules of this court impose certain procedural obligations on parties who seek summary judgment as well as parties who oppose such a motion. A motion for summary judgment must be accompanied by "a separate, short and concise statement of material facts, supported by appropriate record citations, as to which the moving party contends there is no genuine issue to be tried." Loc. R. 56.[1] Similarly, a party opposing a summary judgment motion must submit "a separate, short and concise statement of material facts, supported by appropriate record citations, as to which it is contended that there exist a genuine issue to be tried."

In this instance, the defendants who have moved for summary judgment have provided the court with the requisite Local Rule 56 factual statement, but the plaintiff has not complied with this requirement as it applies to a party opposing a summary judgment motion. The plaintiff's memorandum in opposition to the summary judgment motion contains a section entitled "Factual Background." Plaintiff's Memorandum of Law in Opposition of [sic] Defendant Helwig and Whitney's Motion for Summary Judgment ("Plaintiff's Memorandum") (Docket No. 42) at 5-15. I construe this to be the plaintiff's Local Rule 56 factual statement but note that it is devoid of support in the form of record citations. In these circumstances, for purposes of evaluating the pending summary judgment motion, the court accepts as true all properly supported assertions in the moving parties' factual statement.[2] *Winters v. FDIC,* 812 F. Supp. 1, 2 (D. Me. 1993); *McDermott*

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[1] The Local Rules were recodified subsequent to the briefing of the pending summary judgment motion. With the exception of the requirement that the statements of material fact referred to therein must be separate from the parties' legal memoranda, the relevant procedural obligations of the parties have not changed as a result of the recodification. Therefore, for the sake of clarity and convenience, citations are to the currently applicable Local Rules.

[2] Elsewhere, with reference to Fed. R. Civ. P. 56(f), the plaintiff takes the position that affidavits with which to oppose the summary judgment motion are "unavailable" to him. Plaintiff's (continued...)

v. Lehman, 594 F. Supp. 1315, 1321 (D. Me. 1984).

The plaintiff takes the position that certain attested copies of court documents appended to the affidavits of Helwig and Whitney are not validly part of the summary judgment record in light of the best-evidence rule. According to the plaintiff, only the originals of the court documents in question will suffice. The summary judgment rule does indeed require the parties to present affidavits setting forth "such facts as would be admissible in evidence." Fed. R. Civ. P. 56(e). But, in the next sentence, Rule 56 specifically contemplates the presentation of "[s]worn or certified copies of all papers or parts thereof referred to in an affidavit." This comports with the Federal Rules of Evidence, which provide that "[a] duplicate is admissible to the same extent as an original unless (1) a genuine question is raised as to the authenticity of the original or (2) in the circumstances it would be unfair to admit the duplicate in lieu of the original." Fed. R. Evid. 1003.

In this instance, the plaintiff contends that only the originals will do because one of them is a forgery, and because "[v]arious records offered by Defendant Helwig as evidence have clearly been altered and or tampered with." Plaintiff's Memorandum at 12, 15. These contentions are, themselves, unsupported by anything of evidentiary quality. It is a well-settled principle that, for summary judgment purposes, "[m]ere allegations, or conjecture unsupported in the record, are insufficient to raise a genuine issue of material fact." *Thomas v. Metropolitan Life Ins. Co.*, 40 F.3d 505, 508 (1st Cir. 1994) (citation omitted). In other words, notwithstanding the obligation to view

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[2](...continued)
opposition to Defendant Helwig and Whitney's Motion for Summary Judgment (Docket No. 42). Rule 56(f) permits the court to deny or defer a motion for summary judgment, but only when it appears from the affidavits of the non-moving party "that the party cannot for reasons stated present by affidavit facts essential to justify the party's opposition." Fed. R. Civ. P. 56(f). Since the plaintiff has not supported his Rule 56(f) request by affidavit, the court is unable to grant it and must proceed to rule on the summary judgment motion as presented.

the record in the light most favorable to the plaintiff as the non-moving party, the court cannot indulge the plaintiff's unsupported conjecture to the authenticity and veracity of the documents proffered by the moving parties. Or, to frame the issue in terms of Evidence Rule 1003, the plaintiff has failed to raise a genuine question as to the authenticity of the original documents at issue.

b. Factual Context

Accordingly, and for purposes of evaluating the pending summary judgment motion only, the record reveals the following:

The plaintiff's complaint alleges, *inter alia,* that he was illegally arrested by Cumberland County sheriff's deputies and incarcerated at the Cumberland County Jail on October 27, 1994. Complaint (Docket No. 1c) at ¶¶ 28-51. According to the complaint, the arresting deputies — defendants Holmes and Foss — did not possess a warrant to arrest the plaintiff. *Id*. at 42. The complaint further identifies defendant Whitney as the clerk of the Maine District Court in Bridgton and defendant Helwig as a deputy clerk at the same court.[3] *Id*. at ¶¶ 4-5. The plaintiff alleges that "[d]efendants Holmes and Foss conspired with Bridgton Court Clerks Defendants and co-conspirators Whitney and Helwig by committing perjury and or false swearing when they contrived and postdated an arrest warrant on or about October 27, 1994." *Id*. at ¶ 55; *see also id*. at ¶ 56 (identifying the warrant as number BR 93-00646 and alleging that the warrant was used as a "pretext" for illegally incarcerating plaintiff at county jail).

In fact, on June 23, 1993, a judicial officer, identified only as "Judge Donovan," directed the

[3] Helwig and Whitney have admitted this allegation as to Helwig and aver that Whitney formerly served as clerk of court in Bridgton but is no longer so employed. Answer of Defendants Helwig and Whitney (Docket No. 33) at ¶¶ 4-5.

clerk's office at the Bridgton court to issue a warrant for the arrest of the plaintiff because of his failure to appear in court on that date in connection with a charge of operating a motor vehicle without a license. Affidavit of Carolyn Helwig ("Helwig Aff."), appended to Defendants Helwig's and Whitney's Statement of Undisputed Material Facts ("Helwig-Whitney SMF") (Docket No. 40), at ¶ 3 and Exh. A thereto. On the back of the uniform summons and complaint documenting the motor vehicle charge, Judge Donovan checked the box marked "Arrest Warrant to Issue," and added the notation "CW," which stands for "clerk's warrant."[4] Helwig Aff. at ¶ 3. Approximately a year and a half later, the warrant was returned to the court subsequent to the plaintiff's arrest. *Id*. at ¶ 4 and Exh. C thereto. The matter was dismissed on November 1, 1994. Helwig Aff. at ¶ 5. Helwig entered the dismissal into the court's computer, but due to an unspecified "glitch" in the computer system, the relevant computer printout shows the date of dismissal, incorrectly, as June 23, 1993. *Id.* Whitney does not recall any involvement in any of the foregoing. Affidavit of Penny Whitney,

[4] Appended to the reply memorandum submitted by Whitney and Helwig is an affidavit executed by Judge Robert W. Donovan. Affidavit of Judge Robert W. Donovan, appended to Reply Memorandum of Defendants Helwig and Whitney in Support of their Motion for Summary Judgment (Docket No. 44). In his affidavit, Judge Donovan confirms, based on personal knowledge, that he directed the clerk's office in Bridgton to issue the warrant in question on June 23, 1993, that the notation "CW" appearing on the uniform summons and complaint stands for "clerk's warrant" and was written by him. *Id*. The plaintiff has filed a lengthy written memorandum challenging the assertions in this affidavit. *See* Plaintiff's Objection and Reply, etc. (Docket No. 48). Neither Fed. R. Civ. P. 56 nor Local Rule 56 contemplates that a moving party will have an opportunity, subsequent to the filing of the non-moving party's opposition papers, to supplement the factual assertions made in the original motion. Helwig and Whitney have not sought leave to supplement the summary judgment record in this manner, but the plaintiff has not objected on procedural grounds to the submission of the Donovan Affidavit. His other objections to it are without merit. In the main, the Donovan Affidavit is simply corroborative of other factual assertions contained in the Local Rule 56 Statement of Material Fact accompanying the Helwig/Whitney motion. I have considered the Donovan Affidavit only to that extent. *See Pew v. Scopino*, 161 F.R.D. 1 (D. Me. 1995) (parties bound by their Statements of Material Fact and cannot challenge summary judgment decision based on facts not asserted therein).

appended to Helwig-Whitney SMF, at ¶ 3.

c. Discussion

Helwig and Whitney previously moved to dismiss the complaint as against them on the ground of absolute judicial immunity. Memorandum of Law in Support of Defendant Whitney's Motion to Dismiss (Docket No. 3); Memorandum of Law in Support of Defendant Helwig's Motion to Dismiss (Docket No. 8). Citing *Slotnick v. Garfinkle*, 632 F.2d 163, 166 (1st Cir. 1980), the court denied the dismissal motions, holding that the question of absolute immunity as it pertains to these two defendants turns on a factual determination of whether they were "implementing or carrying out a judge's order." Order Denying Defendants Whitney and Helwig's Motions to Dismiss (Docket No. 32). At the summary judgment stage, Helwig and Whitney contend they have now demonstrated the requisite factual predicate. They also ask the court to reconsider its previous ruling that a court clerk may only invoke judicial immunity when implementing or carrying out a judge's order.

I agree with Helwig and Whitney that the summary judgment record, even when viewed in the light most favorable to the plaintiff, demonstrates that the actions complained of were taken at the direction of a judge and that they are therefore immune from suit pursuant to both state and federal law. I therefore recommend entry of summary judgment in their favor on that basis.

The doctrine of absolute judicial immunity, applicable to "those who carry out the orders of judges," shields such persons from section 1983 liability. *Slotnick*, 632 F.2d at 166 (citation omitted). As to the pendent state-law claims, the relevant rule appears at section 8111 of the Maine Tort Claims Act, which provides that employees of governmental entities "shall be absolutely immune from personal civil liability" for, *inter alia*, "[u]ndertaking or failing to undertake any

judicial or quasi-judicial act." 14 M.R.S.A. § 8111(1)(B). Helwig and Whitney do not address this provision in their summary judgment motion, although they cited it in their unsuccessful bid for dismissal. I therefore regard it as implicit in both the court's previous ruling and in these defendants' summary judgment motion that the standard for immunity set forth in *Slotnick* would be sufficient to confer immunity for purposes of the Tort Claims Act as well.

The plaintiff contends that the issue is actually one of discretionary function immunity, as set forth in *Harlow v. Fitzgerald*, 457 U.S. 800 (1982), and, as to state-law claims, the Tort Claims Act, *see* 14 M.R.S.A. § 8111(1)(C) (providing for immunity for government employees in "[p]erforming or failing to perform any discretionary function or duty"). This principle is plainly inapplicable because the issuance of an arrest warrant by a court clerk, pursuant to the order of a judge, is not a discretionary function within the meaning of either federal or state law.

The plaintiff further seeks to resist the summary judgment motion by attempting to cast doubt on the unrebutted factual assertions presented by Helwig and Whitney in their affidavits. As noted, *supra*, the plaintiff's contentions that the documents attached to the affidavits are forgeries — and, thus, that Helwig's and Whitney's sworn assertions concerning these documents are untrue — have no evidentiary support. Although, in an appropriate case, a party can successfully resist a summary judgment motion "by showing the existence of specific facts which would give a reasonable jury cause to disbelieve assertions supporting the movant's version," as opposed to presenting evidence in direct contradiction to a fact presented by the movant, an "unspecified hope of undermining [an affiant's] credibility" is insufficient. *Playboy Enters., Inc. v. Public Serv. Comm'n of Puerto Rico*, 906 F.2d 25, 40 (1st Cir. 1990) (citation and internal quotation marks omitted). In this instance, the only contention that rises above the level of unspecified hope is the plaintiff's suggestion that the

moving parties' "glitch scenario" is "preposterous." Plaintiff's Memorandum at 13. I agree that Helwig and Whitney have not come forward with an explanation for why certain of the Bridgton District Court's computer records are incorrect as to the date of dismissal for the criminal proceeding that led to the plaintiff's arrest. Nevertheless, nothing in the record contradicts or even casts doubt upon the sworn assertions of Helwig and Whitney that the unspecified "glitch" reflects some kind of error and that the attested copies of court documents they have supplied do indeed accurately reflect what transpired in state court.

Nor am I able to agree with the plaintiff that summary judgment is inappropriate because the record fails to establish that the judicial officer signed the warrant at the time it was issued, or that it bore the seal of the issuing court. These alleged deficiencies simply do not rebut the sworn assertion to the effect that Helwig acted pursuant to judicial order. Because Whitney and Helwig have produced uncontroverted evidence to the effect that the only actions challenged by the plaintiff were done pursuant to a judge's order, they are entitled to summary judgment in their favor based on the doctrine of absolute judicial immunity. Because it is not necessary in these circumstances for the court to take up the broader question of whether a state court clerk would enjoy judicial immunity even if she did not act at the specific direction of a judge, I decline the request of Whitney and Helwig to revisit the court's previous ruling on this issue and recommend the court do the same.

II. The Supplemental Pleadings

Also pending are two competing motions concerning other parties the plaintiff has named as defendants in this action: Ridlon and a group of persons identified only as "unknown Cumberland County Jail personnel." On January 6, 1997, the plaintiff filed a "Supplemental Pleading" containing

certain additional allegations against Ridlon and the unknown jail personnel (Docket No. 29). In so doing, the plaintiff invoked Fed. R. Civ. P. 15(d), which permits a party, upon motion, "to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented." Fed. R. Civ. P. 15(d). The supplemental pleading was not accompanied by a motion for leave to serve it. On March 3, nearly two months later, the attorney who had previously appeared on behalf of Holmes and Foss filed an answer to the supplemental pleading on behalf of Ridlon and the unknown jail personnel (Docket No. 43). Thereafter, the plaintiff moved to "dismiss," i.e., to strike, this answer as untimely (Docket No. 50). Counsel for Holmes, Foss, Ridlon and the unknown jail personnel, referring to them collectively as the "Cumberland County Defendants," responded by opposing the motion to strike and by moving to dismiss the complaint as to Ridlon and the unknown jail personnel. Objection to Plaintiff's "Motion to Dismiss Answers of Defendants Ridlon and Unknown Cumberland County Jail Personnel" and Cross-Motion to Dismiss by the Cumberland County Defendants (Docket No. 51).

It is apparent that the root causes of this procedural muddle are the *pro se* plaintiff's failure to understand the Federal Rules of Civil Procedure and the resulting difficulty that the Cumberland County defendants have had in returning the procedural volleys of the plaintiff. Were the Supplemental Pleading of January 6 a traditional complaint that had been duly served on the defendants as of that date, the plaintiff's point concerning the untimeliness of the answer would be well-taken. However, the general purpose of the Federal Rules of Civil Procedure — "to secure the just, speedy and inexpensive determination of every action," Fed. R. Civ. P. 1 — would be ill-served by, in effect, deeming these defendants to have waived opposition to a pleading that was itself filed without any authority or basis in the rules.

The mechanism by which a party may gain leave to file and serve a supplemental pleading — Rule 15(d) — consigns such matters to the discretion of the court, which should grant such leave freely "when doing so will promote the economic and speedy disposition of the entire controversy between the parties, will not cause undue delay or trial inconvenience, and will not prejudice the rights of any of the other parties to the action." 6A Charles Alan Wright *et al.*, *Federal Practice & Procedure* § 1504 at 186-87 (1990 ed.). In the circumstances, it would be a prudent exercise of that discretion to treat the supplemental pleading as if it were accompanied by a Rule 15(d) motion and to permit its filing and service. I make that determination because the papers filed by the Cumberland County defendants — i.e., the answer to the Supplemental Pleading filed on behalf of Ridlon and the unknown jail personnel, and the motion to dismiss — resist the supplemental pleading on its merits rather than contest its presence in the record.[5] Exercising the court's authority under Rule 15(d) to permit such a supplemental pleading "upon such terms as are just," I deem the answer filed on behalf of Ridlon and the unknown jail personnel to have been filed on a timely basis. Therefore, the plaintiff's motion to strike the answer to his Supplemental Pleading is denied.

III. The Motion to Dismiss

Counsel for the Cumberland County defendants has moved on their behalf to dismiss the complaint as to the unknown defendants and Ridlon. Concerning the former, the contention is that the plaintiff should not be permitted to leave these parties unidentified any longer. As to the latter, the motion essentially takes the position that the complaint, even as amended and supplemented, fails to state a valid claim against Ridlon.

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[5] The Supplemental Pleading does not make any allegations against Helwig, Whitney or Van Nguyen — the other defendants who have appeared in this action.

a. The Unknown Defendants

On April 29, 1997, I conducted a hearing to clarify the status of this case and to resolve certain discovery disputes that were outstanding between the plaintiff and the Cumberland County defendants. The plaintiff was present and all defendants who have appeared were represented by counsel. At the hearing, the Cumberland County defendants were ordered to produce by May 2 certain written policies and procedures of the Cumberland County Sheriff's Department pertaining to jail operations. The same defendants were also ordered to provide the plaintiff by the same date a list of all jail personnel who were on duty in the intake and booking area of the jail on the date of the plaintiff's arrest. The plaintiff indicated that this discovery material would permit him to identify the unknown defendants, whom he stated were three jail employees with whom he had contact upon his arrest. I therefore directed the plaintiff to do so by May 6, 1997, granting him leave to amend his complaint for the limited purpose of identifying the three unknown defendants and adding any allegations that are material to them. I am satisfied that this resolves any issues raised by the pending motion to dismiss the complaint as to the unknown defendants, and accordingly recommend denial of the motion as to them. *See Munz v. Parr*, 758 F.2d 1254, 1257 (8th Cir. 1985) (dismissal of unknown defendants proper only "when it appears that the true identity of the defendant cannot be learned through discovery or the court's intervention.").

b. Ridlon

The Cumberland County defendants move to dismiss the complaint as against Ridlon on the ground that the specific allegations against him, which appear in the plaintiff's supplemental pleading, fail to state a valid claim under section 1983. Coming as it does after Ridlon filed an

answer to the pleading in question, the request for dismissal is untimely as a motion under Fed. R. Civ. P. 12(b)(6) but may be treated as a motion for judgment on the pleadings. Fed. R. Civ. P. 12(h). The court applies the same standard in any event. 5A *Federal Practice & Procedure*, § 1367 at 515; *see also Slotnick*, 632 F.2d at 165. The court must "take the well-pleaded facts as they appear in the complaint, extending plaintiff every reasonable inference in his favor." *Pihl v. Massachusetts Dep't of Educ*., 9 F.3d 184, 187 (1st Cir. 1993). A defendant is entitled to dismissal for failure to state a claim "only if it clearly appears, according to the facts alleged, that the plaintiff cannot recover on any viable theory." *Correa-Martinez v. Arrillaga-Belendez*, 903 F.2d 49, 52 (1st Cir. 1990); *see also Jackson v. Faber*, 834 F. Supp. 471, 473 (D. Me. 1993).

The Cumberland County defendants invoke the principle articulated in *City of Canton v. Harris*, 489 U.S. 378 (1989). In *Canton*, the Supreme Court ruled that "inadequacy of police training may serve as the basis for § 1983 liability," but "only where the failure to train amounts to deliberate indifference to the rights of persons with whom the police come into contact." *Id*. at 388. Obviously, in this instance the term "police" can be understood to include the Cumberland County Sheriff's Department.

The plaintiff does not address these defendants' *Canton* argument in his opposition to the motion. Rather, he simply presses his position that the Cumberland County defendants have thwarted his efforts at discovery. This has no relevance to the question of whether the plaintiff states a valid claim against Ridlon. Nevertheless, I conclude that he does. Indulging every reasonable inference in favor of the plaintiff, his supplemental pleading accuses Ridlon of exercising his supervisory authority in a manner reflecting a deliberate indifference to the constitutional rights of citizens with whom his employees come into contact. Supplemental Pleading at ¶¶ 16-18. As the

Cumberland County defendants note, the First Circuit has repeatedly held that such indifference, to be actionable, must have been "deliberate, reckless or callous." *Seekamp v. Michaud*, 1997 WL 129007 at *6 (1st Cir. Mar. 26, 1997) (quoting *Gutierrez-Rodriguez v. Cartagena*, 882 F.2d 553, 562 (1st Cir. 1989)); *see also Board of the County Commrs. of Bryan County, Oklahoma v. Brown*, 1997 WL 201995 at *8 (U.S. Apr. 28, 1997) ("deliberate indifference" a "stringent standard of fault, requiring proof that a municipal actor disregarded a known or obvious consequence of his action."). While this speaks to the type of proof the plaintiff would have to adduce at trial to support his claim, his failure to include these magic words in his complaint does not, by itself, entitle Ridlon to judgment on the pleadings.

IV. Conclusion

For the foregoing reasons, I recommend that the motion for summary judgment of defendants Helwig and Whitney be **GRANTED**, I **DENY** the plaintiff's motion to strike the answer to his supplemental pleading, and I recommend that the motion of the Cumberland County defendants for dismissal be **DENIED**.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within ten (10) days after being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.

Dated this ___ day of April, 1997.

David M. Cohen
United States Magistrate Judge